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7 **UNITED STATES BANKRUPTCY COURT**
8 **NORTHERN DISTRICT OF CALIFORNIA**
9 **SAN FRANCISCO**

10 **In re:**
11 **PG&E Corporation and**
12 **Pacific Gas and Electric Company,**
13 **Debtors.**

Case No. 19-30088
(Jointly Administered)
Chapter: 11
OBJECTION TO DEBTORS' NOTICE
OF PROPOSED TREATMENT OF
RECLAMATION CLAIMS
Re: Dkt. No. 2789

17 Sabre Industries, Inc. ("Sabre"), by and through its undersigned counsel, objects to the
18 Debtors' proposed treatment of its claim as set forth in the *Debtors' Notice of Proposed Treatment of*
19 *Reclamation Claims* (the "Notice"), and respectfully states as follows:

20 **BACKGROUND**

21 On January 29, 2019 (the "Petition Date"), the Debtors commenced voluntary cases under
22 chapter 11 of the Bankruptcy Code. The Debtors continue to operate their businesses and manage
23 their properties as debtors in possession pursuant to sections 1107(a) and 1108 of the Bankruptcy
24 Code.

25 Sabre is a manufacturer and supplier of highly-engineered support structures for electric
26 transmission and distribution. With respect to the Debtors, Sabre manufactures and delivers in the
27 ordinary course of business various steel utility poles to the Debtors.

Prior to the Petition Date, Sabre manufactured certain steel poles at the direct request of PG&E, including under order numbers 19-418351, 19-418579, 19-418687, 19-418762, and 19-418823. Each of the poles manufactured by Sabre have unique identifiers that are welded on the bottom of the poles that distinguish the poles from each other and similarly situated products. Thereafter, in late December 2018 and early January 2019, the poles were shipped, delivered and inspected by the Debtors.

On February 13, 2019, Sabre informed the Debtors of its reclamation claim by overnight mail and electronic mail (the “Sabre Demand Letter”). A copy of which is attached hereto as Exhibit 1. In the Sabre Demand Letter, Sabre sought to reclaim no less than \$371,556.90 in goods (the “Goods”) delivered to the Debtors in the 45 days prior to the Petition Date. Specifically, Sabre sought to reclaim the following:

Order #	Bid #	Invoice #	Invoice Date	PO #	Invoiced Amounts	Ship Date	Arrival Date	Ship-To Address
19-418351	19-14438	540504	12/31/2018	3501176011	\$ 4,550.63	12/14/2018	12/18/2018	Fall River Mills, CA
19-418579	19-14468	541757	1/15/2019	3501176827	\$ 66,335.35	12/26/2018	1/2/2019	Oroville, CA
19-418687	19-14469	541758	1/15/2019	3501176846	\$ 96,103.53	12/26/2018	1/2/2019	Oroville, CA
19-418762	19-14470	542141	1/17/2019	3501176797	\$ 105,571.01	12/26/2018	1/7/2019	Oroville, CA
19-418823	19-14471	542142	1/17/2019	3501176792	\$ 73,879.47	12/26/2018	1/7/2019	Oroville, CA
Total					\$ 346,439.99			
Sales Tax					\$ 25,116.81			
Grand Total					\$ 371,556.80			

On February 19, 2019, Sabre filed its *Notice of Filing of Reclamation Demand* [Dkt. No. 476] attaching a copy of the Sabre Demand Letter. [Dkt. No. 476].

On February 28, 2019, the Court entered an order (the “Reclamation Procedures Order”) establishing certain procedures for the treatment of all claims seeking reclamation of goods pursuant to section 546(c) of the Bankruptcy Code.

On June 28, 2019, in accordance with the Reclamation Procedures Order, the Debtors filed the Notice which asserts that the entire amount of Sabre’s reclamation claim is invalid because (a) it includes freight, taxes, or similar charges, and (b) that the Goods were consumed prior to the receipt

1 of the Sabre Demand Letter or were unidentifiable. As more fully set forth below, the Goods were
2 and still are readily identifiable and still in the Debtor's possession. As a result, Sabre is entitled to
3 either reclaim the Goods or an administrative claim in the amount of the value of the Goods.

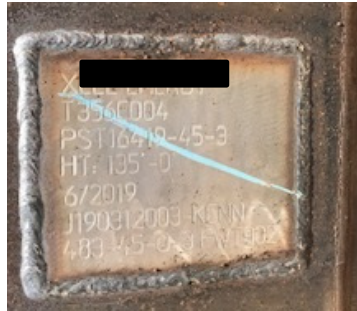
4 **OBJECTION**

5 The elements necessary for a valid reclamation claim include: (i) the goods were sold to the
6 debtor in the ordinary course of business, (ii) the debtor was insolvent when the goods were
7 delivered, (iii) a written demand in accordance with the applicable statute was timely delivered, and
8 (iv) the goods were identifiable and in the debtor's possession at the time the reclamation demand
9 was received by the debtor.¹ *In re Mayer Pollack Steel Corp.*, 157 B.R. 952, 959 (Bankr. E.D. Pa.
10 1993). Here, the Debtors do not dispute that the Goods were sold in the ordinary course of business,
11 that the Debtors were insolvent when the goods were delivered, or that the goods were not in their
12 possession at the time of the Sabre Demand Letter. Rather, the Debtors base their objection on the
13 fact that the Goods were "consumed or not identifiable." This contention is wholly without merit.
14 In fact, the Debtors have not provided a single factual allegation or document evidencing their
15 assertion that the Goods were "consumed" and no longer identifiable.

16 Goods are identifiable when they actually exist, are intact, are capable of being physically
17 recognized, and have not been converted into a different finished product. *See In re Dana Corp.*,
18 367 B.R. 409, 418 (Bankr. S.D.N.Y. 2007); *In re Lawrence Paperboard Corp.*, 52 B.R. 907, 910
19 (Bankr. D. Mass. 1985). Further, if the good is under a debtor's "control then it is both 'identifiable'
20 and 'in the possession of the debtor.'" *In re Charter Co.*, 54 B.R. 91, 93 (Bankr. M.D. Fla. 1985).
21 Courts have also stated that if a reclaiming creditor can devise a formula by which they can trace the
22 good, establish the time frame the good was delivered to the debtor, and can show the formula traces
23 the product within that time frame with accuracy, then the seller need not physically identify the
24 goods to sustain a reclamation claim. *See In re Braniff*, 113 B.R. 745, 755 (Bankr. M.D. Fla. 1990).

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26
27 ¹ The requirement that goods be "identifiable" is not found in the plain language of Uniform Commercial Code section
28 2-702 nor in Bankruptcy Code section 546(c). *See In re Hechinger Inv. Co. of Delaware, Inc.*, 274 B.R. 402, 407
(Bankr. D. Del. 2001).

1 Sabre need not devise a formula to trace the Goods for its reclamation claim to be successful
2 because, here, the Goods are readily identifiable as the poles are intact, physically recognizable by
3 Sabre, and in the Debtors' control. Further, the poles are branded with unique identifiers that allow
4 Sabre (and the Debtors) to easily find them. For example, the poles are welded with an ID tag
5 substantially similar to the image below:



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11 Additionally, attached hereto as Exhibit 2 is a listing of the ID tag numbers for the poles referenced
12 in the Sabre Demand Letter. Therefore, the poles are clearly identifiable for purposes of Sabre's
13 reclamation claim.

14 The only two cases cited by the Debtors are distinguishable. *In re Arlco, Inc.*, 239 B.R. 261,
15 265 (Bankr. S.D.N.Y. 1999); *In re Landy Beef Co., Inc.*, 30 B.R. 19 (Bankr. D. Mass. 1983). The
16 creditors in *Arlco* and *Landy Beef* who sought reclamation were suppliers or manufacturers of raw
17 materials (textiles and calve-livers) that the Debtors' processed into different finished products.
18 Here, Sabre manufactured and delivered finished goods with no further manufacturing needed and
19 the Debtors did not convert the poles into a finished product. Instead, after delivery, PG&E affixes
20 the poles to the ground and fastens third-party devices to the poles. Such activity, however, does
21 not render Sabre's Goods as non-identifiable. These devices can be removed from the poles and the
22 poles themselves can be removed from the ground. Thus, the Goods are capable of being returned to
23 Sabre and are reclaimable.

24 Moreover, affixing third-party items to a pole does not commingle the goods or destroy a
25 supplier's reclamation claim where a supplier's goods remain readily identifiable. *See Charter*, 54
26 BR at 91. For example, in *Charter* the Court found that commingled crude oil was subject to
27 reclamation where the oil was identifiable (*i.e.*, the goods are traceable and of similar kind and
28

1 grade). *Id*; see also *In re Wheeling-Pittsburgh Steel Corp.*, 74 B.R. 656 (Bankr. W.D. Pa. 1987)
2 (finding that coal that was commingled, but not converted into finished product, could be reclaimed
3 because it was traceable). Here, even if the Debtors installed or, as the Debtors assert “consumed,”
4 Sabre’s Goods, the poles remain readily identifiable.

5 Finally, section 546(c) also affords a bankruptcy court broad discretion to substitute an
6 administrative claim or lien in place of the right to reclaim. This discretion gives the court needed
7 flexibility and permits it to recognize the reclaiming creditor’s rights while allowing the debtor the
8 opportunity to retain the goods in order to facilitate the reorganization effort. If the Debtors do not
9 want to return Sabre’s Goods, then Sabre should be granted an administrative claim in the value
10 equal to the Goods.

11 **CONCLUSION**

12 WHEREFORE, Sabre hereby requests that an order be entered either (a) authorizing the
13 reclamation of the Goods or (b) granting Sabre an administrative claim in amount equal to the value
14 of the Goods, and such other or further relief as is just and appropriate under the circumstances.

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16 DATED: 07/18/2019

BLANK ROME LLP

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18 By: /s/ Jonathan A. Loeb
19 Jonathan A. Loeb

20 Attorneys for Sabre Industries, Inc.
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